

HOGAN & HARTSON

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

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R. Latane Montague
Partner
(202) 637-6567
RLMontague@hhlaw.com

BY ELECTRONIC MAIL

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Attention: Ms. Phillis Johnson-Ball, Deputy Chief
Environmental Filing
STB Finance Docket No. 35087

Re: STB Finance Docket No. 35087 – Canadian National Railway Co. and Grand Trunk Corporation – Control – EJ&E West Company

National Railroad Passenger Corporation Comments on Draft Environmental Impact Statement

Dear Ms. Rutson:

On behalf of the National Railroad Passenger Corporation (“Amtrak”), this letter responds to your July 25, 2008 request for comments on the Draft Environmental Impact Statement (“DEIS”) for the proposed Canadian National Railway Corporation and Grand Trunk Corporation (collectively “CN”) acquisition of the EJ&E West Company (“EJ&EW”), STB Finance Docket No. 35087.

Amtrak has carefully reviewed the DEIS and provides the following comments and suggested modifications which must be incorporated in the final EIS to insure that the SEA has fully addressed the impact of the proposed action on Amtrak passenger rail service:

1. Mitigation Implementing the Purpose of Voluntary Mitigation Measure “VM 71” Must Be Included In the Final EIS and Any Final Board Opinion and Order Approving this Transaction

The final EIS for this action, and any final opinion and order of the Board approving the transaction, must include as a mitigating condition a requirement that CN preserve Amtrak’s access to Chicago Union Station over the Air Line Route at its current operating standards, at no additional cost to Amtrak or the State of Illinois, until such time that an alternative routing using

the Grand Crossing Route is completed and in operation. The DEIS currently contains a proposed condition to this general effect, which is labeled VM 71.¹ VM 71 has been proposed by the Applicant, which has indicated support for maintaining Amtrak's access to Chicago Union Station at the current operating standards - at current costs to Amtrak and the State of Illinois - on numerous occasions. For example, CN has stated in previous filings with the Board that "CN agreed to the conditions sought by Amtrak."² CN has stated that it has "committed to allowing Amtrak to remain on the Air Line route indefinitely, until the Grand Crossing routing or another alternative acceptable to Amtrak is available, at costs to be capped at their current level (adjusted only for inflation pursuant to the formula contained in the current agreement between Amtrak and CN) and at the level of operating utility that Amtrak currently enjoys."³

At this time, Amtrak and CN have not reached a final binding agreement memorializing CN's stated intention to abide by the conditions sought by Amtrak. Accordingly, it remains critical that the STB not approve this transaction without conditioning that approval on the maintenance of Amtrak's Air Line Route access to Chicago Union Station, as requested in Amtrak's Comments in Opposition to Proposed Transaction (NRPC-7, filed January 28, 2008).

2. The Text of VM 71 Must be Amended and Clarified to Insure That It Achieves its Purpose

The purpose of VM 71 is to assure that Amtrak retains its access to Chicago Union Station from CN's Chicago Subdivision at current costs, and at the current operating standards until the Grand Crossing Route is completed and in operation. As currently drafted VM 71 would not provide that assurance, and the language of this condition must be amended accordingly.

First, VM 71, and the DEIS in general, refer to the need for Amtrak to remain on the "St. Charles Air Line (Air Line)" in order to continue accessing Chicago Union Station. The Air Line, itself, is a short elevated section of track that runs east-west for less than a mile parallel to 16th Street, passing over the southern approach tracks to Chicago Union Station. Maintenance of the Air Line alone is obviously not sufficient to maintain the current access. From the beginning, Amtrak has clearly stated that what must be maintained is the "Air Line Route," not just the Air

¹ DEIS VM 71 currently reads as follows: "*VM 71. Applicants shall abide by the commitment made to Amtrak in a letter dated March 10, 2008 concerning Amtrak's use of the St. Charles Air Line (Air Line). In general, the commitment allows Amtrak to remain indefinitely on the Air Line after CN's trains are rerouted from the Air Line onto the EJ&E rail line should the Proposed Action be approved and implemented, thereby preserving Amtrak's access to Chicago's Union Station and Amtrak's ability to continue to provide service to and from points such as Champaign and Carbondale, Illinois. Applicants shall abide by the commitment to capping the cost to Amtrak for maintaining the Air Line at the current level, indexed for inflation (Applicants 2008p).*"

² Applicants' Reply to Illinois DOT's Motion to Compel Discovery at 4 (CN-47, filed July 2, 2008).

³ Id. See also Applicant's Response to Comments, Requests for Conditions, and Other Opposition & Rebuttal In Support of the Application at 57 (CN-29, filed March 13, 2008).

Line itself. The Air Line Route is approximately 19.9 miles of track which combines both the Air Line and CN's Chicago Subdivision. CN's application referred to the combination of these two lines as the "Air Line Route"⁴ and this term was expressly adopted in Amtrak's original comments on the application.⁵ A map with color coded lines depicting the Air Line, and various segments of the Air Line Route is attached for reference. This same map was included in Amtrak's original January 28, 2008 comments in the Verified Statement of Michael W. Franke.

To accomplish Amtrak's intent, the intention of the other interested parties who have filed comments in support of Amtrak, and CN's stated intent as represented to the Board⁶, the Air Line Route must be defined to include the entire approximately 19.9 mile route from Markham Yard to the limits of CN's rights on the northern end, as described in more detail in the proposed revised condition VM 71 below.

If the Air Line Route is not properly defined, Amtrak access to Union Station at the current operating standards will be jeopardized. For example, CN has proposed to eliminate all freight traffic on the 11-mile segment of the Air Line Route north of 94th Street (depicted by the dashed line on the attached map), and without this condition, this portion of the track could be formally abandoned, and CN could proceed with the sale of portions of the right-of-way pursuant to agreements with the City of Chicago which have already been negotiated. Similarly, CN has proposed to dramatically decrease freight traffic on the 9-mile segment of the Air Line Route south from 94th Street to Markham Yard (depicted by a solid red line on the attached map). Freight traffic on this segment currently includes an average of 8.4 CN trains per day plus additional BNSF trains operating via trackage rights. After the transaction, only a single daily round trip local is projected for this portion. This makes it likely that unless the Air Line Route is properly defined, this segment, currently maintained to FRA Class 4 standards, will be downgraded once through freight traffic is reduced. Thus, it is critical that the definition of the Air Line Route – as set forth below – include the entire 19.9 miles necessary for Amtrak to preserve its current access to Chicago Union Station.

⁴ Verified Statement of Gerald P. Radloff at page 61, footnote 17, submitted in support of CN Application (CN-2, filed October 30, 2007).

⁵ National Railroad Passenger Corporation's Comments in Opposition to Proposed Transaction (NRPC-7, filed January, 28, 2008) and Verified Statement of Michael W. Franke at 4.

⁶ See, e.g. Applicant's Response to Comments, Requests for Conditions, and Other Opposition & Rebuttal In Support of the Application at 57 (CN-29, filed March 13, 2008) (Stating that CN is "committed to allowing Amtrak to remain on the Air Line route indefinitely, until the Grand Crossing routing or another alternative acceptable to Amtrak is available, at costs to be capped at their current level (adjusted only for inflation pursuant to the formula contained in the current agreement between Amtrak and CN) and at the level of operating utility that Amtrak currently enjoys."); and Applicants' Reply to Illinois DOT's Motion to Compel Discovery at 4 (CN-47, filed July 2, 2008) (Stating that "CN agreed to the conditions sought by Amtrak.").

CN has previously indicated that its “commitment also extends to preserving for Amtrak the current operating standards that it [currently] enjoys.”⁷

The SEA has also recognized that maintenance of all segments of the Air Line Route, including the 9-mile segment which is projected to experience a *decrease* in traffic, is critical to maintaining Amtrak’s current access. As the DEIS notes:

Freight train traffic would *decrease* on the CN Chicago Subdivision segments upon which Amtrak currently operates. CN has specifically agreed to keep these subdivision segments in service until such time that an alternative Amtrak routing can be implemented. Therefore, SEA concluded that the Proposed Action would not adversely affect existing Amtrak service that operates on the CN Chicago Subdivision.

DEIS at 4.1-50 (emphasis added).

To accomplish Amtrak’s intent, the SEA’s intent, the intention of the other interested parties who have filed comments in support of Amtrak, and CN’s stated intent to preserve Amtrak’s access to Chicago Union Station at the current operating standards and current costs, the following mitigating condition must be adopted, including the express definition of Air Line Route included below:

VM 71. Applicants shall preserve the Air Line Route at its current operating standards for continued use by Amtrak trains in accessing Chicago Union Station, at no additional cost to Amtrak or the State of Illinois (adjusted only for inflation pursuant to the formula contained in the current agreement between Amtrak and CN), until such time as the Grand Crossing Route is completed and in operation.

In this condition, “Air Line Route” means the IC rail line from Markham Yard to 16th Street Interlocking (approximately MP 20.1 to MP 1.4 on CN’s Chicago Subdivision), from 16th Street Interlocking to the end of CN’s ownership approximately 70 feet west of the bascule bridge over the South Branch of the Chicago River (approximately 0.6 miles on CN’s St. Charles Air Line), and from 16th Street Interlocking to the connection with NS at 21st Street Interlocking (approximately MP 2.1 to MP 2.7 on CN’s Freeport Subdivision), collectively totaling approximately 19.9 miles.

* * *

⁷ March 10, 2008 letter from E. Hunter Harrison, President and CEO of CN to Alex Kummant, President National Railroad Passenger Corporation, included as Exhibit A to Holstrom/Ladue Verified Statement in Applicant’s Response to Comments, Requests for Conditions, and Other Opposition & Rebuttal in Support of the Application (CN-29, filed March 13, 2008).

Amtrak appreciates the opportunity to comment on the DEIS for the proposed transaction. If you have any questions, or if we can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Latane Montague". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

R. Latane Montague
Counsel for National Railroad
Passenger Corporation

Attachment

cc: Eleanor D. Acheson, Esq.
Jared I. Roberts, Esq.
George W. Mayo, Jr., Esq.

Impact of CN/EJ&E Merger on Amtrak

